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Attorneys for Defendant
LAND HOME FINANCIAL SERVICES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARCUS MANNING, VIRIDIANA LOPEZ
GARCIA,

Plaintiffs,

v.

LAND HOME FINANCIAL SERVICES, INC.,

Defendant.

Case No.: 3:21-cv-06505 WHO

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED (FRCP
12(b)(6))

Date: November 17, 2021
Time: 2:00 PM
Judge: Hon. Judge William H. Orrick
Ctm: 2

Defendant LAND HOME FINANCIAL SERVICES, INC., requests that the Court take
judicial notice of Plaintiff's Complaint filed in this action, a true and correct copy of which is
attached hereto as **Exhibit A**.

DATED: October 6, 2021

JOHNSTON | THOMAS, Attorneys at Law, PC

By: /s/Ryan F. Thomas
Ryan F. Thomas
Anthony Bentivegna
Attorneys for Defendant
LAND HOME FINANCIAL SERVICES, INC.

EXHIBIT A

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Marcus Manning
Viridiana Lopez Garcia
700 Heath Drive
Ione, California 95640

In Pro Per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL FILED
AUG 23 2021

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

MARCUS MANNING
VIRIDIANA LOPEZ GARCIA

Plaintiffs,

V.

LAND HOME FINANCIAL SERVICES,
INC

Defendant.

CV 21 6505
Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

LB

Plaintiffs as for their Complaint against the above-captioned Defendant alleges as follows:

INTRODUCTION

The Truth in Lending Act (TILA) is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably. Before its enactment, consumers were faced with a bewildering array of credit terms and rates. It was difficult to compare loans because they were seldom presented in the same format. Now, all creditors must use the same credit terminology and expressions of rates.

In addition to providing a uniform system for disclosures, the act:

- Protects consumers against inaccurate and unfair credit billing and credit card practices
- Provides consumers with rescission rights

- Provides for rate caps on certain dwelling-secured loans
- Imposes limitations on home equity lines of credit and certain closed-end home mortgages
- Provides minimum standards for most dwelling-secured loans
- Delineates and prohibits unfair or deceptive mortgage lending practices

However, truth, full disclosure is never given in the buyer, seller relationship. “We sold a security”, see Title 15 § 78 C A 10, if it’s included in the definition of a security, it is excluded from the definition of a note, then it can be stated that you’re not dealing with a note, nor are you dealing with a mortgage loan, you’re dealing with an “investment contract” see Title 15 § 77 A, it states that all securities are investment contracts, based upon statutory construction.

Plaintiffs became concern based upon failure by the lender to disclose this hidden fact, pursuant to TILA. Plaintiff decided to submit a request, pursuant to the Freedom of Information’s Act (5 U.S.C. § 552) (“FOIA”) to obtain exemplified copies of full accounting, which includes debt transmittal, closing documents, accounting package and wire transfer history.

On June ____, 2021, Plaintiff submitted a FOIA request to the Lender for: Any and all exemplified copies of full accounting, which includes debt transmittal, closing documents, accounting package and wire transfer history regarding account no: 382725. LHFSI failed to timely respond to the FOIA request. Plaintiff brings this action to challenge LHFSI’s failure to respond and provide copies of full accounting, which includes debt transmittal, closing documents, accounting package and wire transfer, of which LHFSI should have readily accessible.

PARTIES

Plaintiffs purchased residential property in Amador County, California, known and referred to as 700 Heath Dr Ione, California.

1 Land Home Financial Services, Inc is a California corporation doing business at 1355 Willow
2 Way Suite 250 Concord, California. It is an active legal entity in this state.

3
4 **JURISDICTION AND VENUE**
5

6 This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C.
7 §1331. Venue is proper within this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §
8 1391(a).

9 **FACTS**
10

11 The Truth in Lending Act (TILA) is a federal law passed in 1968 to ensure that consumers are
12 treated fairly by businesses in the lending marketplace and are informed about the true cost
13 of credit. The TILA requires lenders to disclose credit terms in an easily understood manner
14 so that consumers can confidently comparison shop interest rates and conditions.

15
16 **Truth in Lending Disclosures**

17 Lenders must provide a Truth in Lending (TIL) disclosure statement that includes information
18 about the amount of your loan, the annual percentage rate (APR), finance charges (including
19 application fees, late charges, prepayment penalties), a payment schedule and the total
20 repayment amount over the lifetime of the loan.

21 The TILA outlines rules that apply to closed-end accounts, such as home or auto loans, and
22 open-ended accounts like credit cards. It does not put restrictions on banks regarding how much
23 interest they may charge or whether they must grant a loan. It does require lenders to disclose
24 information about all charges and fees associated with a loan.

25 Consumers who are refinancing residential mortgage loans have the “right of rescission,” which
26
27 is a three-day cooling off period during which they may cancel the loan without losing any
28

1 money.

2 **What Is Regulation Z**

3 Regulation Z is a Federal Reserve Board rule that requires lenders to give you the true cost of
4 credit in writing before you borrow. That includes spelling out the amount of money loaned, the
5 interest rate, APR, finance charges, fees and length of loan terms.

6
7 In short, Regulation Z is another name for the Truth in Lending Act. The two are used
8 interchangeably.

9 The TILA and Regulation Z have been amended so many times since passage in 1968 that it
10 would take a book to describe all the changes. The first came in 1970 and prohibited
11 unsolicited credit cards, but that was just the start of an onslaught of amendments dealing with
12 almost every aspect of lending and credit cards.

13
14 One of the major amendments was to give the Consumer Financial Protection Bureau (CFPB)
15 rulemaking authority under the TILA. The CFPB has used it muscle heavily in this area,
16 issuing rules for ability-to-repay requirements for mortgages, refined loan originator
17 compensation rules and points and fees limits that apply to qualified mortgages.

18
19 Plaintiff became concern based upon failure by the lender to disclose these hidden facts, pursuant
20 to TILA and that the lender was not fulfilling its obligation under TILA and Regulation Z.

21 Plaintiff therefore decided to submit a FOIA request to obtain exemplified of full accounting,
22 which includes debt transmittal, closing documents, accounting package and wire transfer history,
23 in which (LHFSI) should have readily available.

24
25 **The FOIA Request**

26 On June 19, 2021, Plaintiffs sent FOIA Request via United States Registered Mail Tracking No:
27 RE 800 789 038 US and RE 800 789 055 US.
28

Defendants failed to provide an acknowledgement letter for the FOIA Request. LHFSI also failed to respond within 20 days as per law nor did it seek a 10 days extension.

REQUESTED RELIEF

WHEREFORE, Plaintiffs prays that this Court:

- a. Provide for expeditious proceedings in this action;
- b. Enter an Order declaring that it was unlawful for the Defendant to fail to timely either (1) disclose the information requested by plaintiffs (2) assert an exemption for such information, or (3) state that no such information exist;
- c. Enter an Order directing LHFSI, to within 20 days of issuance of the order, either (1) make available to Plaintiffs any and all documentation responsive to the FOIA Request; (2) assert a valid exemption listed for withholding any such documentation; or (3) state that no such information, documentation exist;
- d. Award Plaintiffs their cost and reasonable attorneys' fees incurred in this action as provided by 5 U.S.C. §552(a)(4)(E); and
- e. Grant such other and further relief as the Court may deem just and proper.

Dated: 8/9/21


Marcus Manning


Viridiana Lopez Garcia